

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison
Company and San Diego Gas & Electric
Company for the 2005 Nuclear Decommissioning
Cost Triennial Proceeding to Set Contribution
Levels for the Companies' Nuclear
Decommissioning Trust Funds and Address
Other Related Decommissioning Issues.

Application 05-11-008
(Filed November 10, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON MOTIONS FOR RECONSIDERATION OF FEBRUARY 9, 2006 RULING**

By motions filed by Southern California Edison Company (Edison) on February 10, 2006, and on February 14, 2006, by both Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E), they request reconsideration of my February 9, 2006 ruling granting the Division of Ratepayer Advocates' (DRA) motion to compel the production of copies of income tax returns for Edison's Nuclear Decommissioning Trusts for six sites. I grant the motions to reconsider, and after reconsideration, I will modify my prior ruling in part.

Edison contends that the ruling erred in applying the 10-day time for responses to motions provided in Resolution ALJ-164 as opposed to the 15-day time for responses provided in Rule 45, arguing that Resolution ALJ-164 only applies if the moving party invokes it. This contention is without merit. Resolution ALJ-164 applies to all motions identified in its paragraph 2. The requirements of Resolution ALJ-164 are "invoked" by the filing of a motion that

it governed by Resolution ALJ-164. Here, the motion at issue is a motion to compel the production of documents, which is subject to Resolution ALJ-164. The fact that DRA mistakenly cited to Rule 45 does not remove it from the requirements of the resolution, anymore than a mistaken cite to Resolution ALJ-164 as authority for a motion to strike does not thereby apply to it the 10-day time for responses rather than the 15 days provided by Rule 45.

Second, the parties were on full notice that discovery disputes are subject to Resolution ALJ-164 (*see* scoping memo,¹ p. 5, dated January 18, 2006) and on further notice that they were to bring disputes to me without delay (*see* PHC transcript, p. 25 lines 18-28 – “I am happy to hear problems from either side ...(sic) - and p. 26, lines 1-10.) DRA states in its motion, and Edison does not dispute, that the parties discussed this discovery dispute before the motion was filed; presumably Edison therefore had and took the opportunity to compose and communicate its objections informally before the motion was filed. Edison’s insistence that it nevertheless required 18 days, as it contends it had a right under Rule 45, to provide its response does not comport with my directions to the parties to act quickly to resolve discovery disputes.

PG&E in its motion for reconsideration, and Edison and SDG&E, by reference to Edison’s extra-record response to the motion to compel,² contend that the privilege against the production of tax documents compels that they be produced to DRA on an eyes-only basis. While the privilege against the

¹ “Parties shall use the procedures contained in Resolution ALJ-164 to seek resolution of discovery disputes.”

² Edison’s untimely response to the motion to compel was not accepted for filing, and Edison has not filed a request that it be accepted as a late-filed document.

production of tax documents (under other circumstances) highlights the need for their confidential treatment in the event that the privilege does not apply and the information is produced, it does not define the required treatment in cases where the information is produced.

The utilities do not explain how the protections ordered in the ruling are insufficient to protect Edison against disclosure of the information. Instead, the utilities contend that the ruling contravenes a long-standing arrangement between the parties under which the utilities have afforded DRA eyes-only access to tax documents and not copies. The utilities do not explain why that former arrangement governs this dispute, and I cannot discern a basis for reaching that conclusion.

The utilities also contend that the production of hard copies, as opposed to eyes-only access, is unnecessary for DRA to do its job. DRA responds that it requires access, unfettered by time constraints created by having to handwrite and take notes off the tax returns. In addition, such limits can be expected to interfere with DRA's ability to confidentially perform its analysis with access to other relevant documents and records.

However, upon review of the motions for reconsideration, DRA's response, and Edison's reply, I conclude that, on balance, Edison's interest in protecting the documents from inadvertent disclosure outweighs DRA's interest in avoiding the burden of having to renew its request for the documents in the speculative event that it may have an interest in them in the future.

I therefore amend my February 9, 2006 Ruling as follows:

DRA is directed to treat the data as confidential under the conditions established by § 583 and the Commission's General Order (GO) 66-C which governs public disclosure of information obtained by the Commission. Further, DRA shall not retain any hard copy copies,

shall not share any of this data with other Commission staff not assigned to the relevant portion of this proceeding, nor shall DRA retain any of this data. Specifically, upon issuance of a Commission decision finally resolving any application for rehearing the decision in this proceeding, or after the period to apply for rehearing has expired and no application for rehearing has been filed, DRA shall return all copies to Edison or demonstrate to Edison's satisfaction that all copies are permanently destroyed. DRA may not retain any electronic images or any other form of additional copies of this data. DRA may not retain by any other means electronic or paper copies in handwritten or other form any information extracted from these tax forms. (Mimeo., p. 5.)

Further, I amend the February 9, 2006 Ruling by modifying Ruling paragraph 2 as follows:

DRA shall treat the information as confidential, as provided by Code § 583 and shall ensure there is no public disclosure of the materials in testimony - or any other means - unless Edison consents to publication following a meet and confer session, or either the Assigned Commissioner or the Commission authorizes its disclosure. DRA shall not retain any hard copy copies, shall not share any of this data with other Commission staff not assigned to the relevant portion of this proceeding, nor shall DRA any of this data. Upon issuance of a Commission decision finally resolving any application for rehearing the decision in this proceeding, or after the period to apply for rehearing has expired and no application for rehearing has been filed, DRA shall return all copies to Edison or demonstrate to Edison's satisfaction that all copies are permanently destroyed. DRA may not retain any electronic images or any other form of additional copies of this data. DRA may not retain by any other means electronic or paper copies in handwritten or other form any information extracted from these tax forms.

PG&E asks that the ruling be amended to address whether DRA is subject to Rev. and Tax. 19542.1. There is no cause to address that issue, as it is not

before me. There has not been any assertion that DRA has disclosed tax documents in violation of that statute.

PG&E asks that the ruling be amended to address the privilege against the production of tax documents and the June 3, 1997, ruling of Administrative Law Judge Careaga invoking the privilege against the production of tax documents. There has not been any assertion here the tax documents may not be produced; the dispute here is the form of production and what protections should be ordered to prevent disclosure to other entities. There is no cause to address whether Edison has a privilege against production of the requested information to DRA.³

IT IS RULED that:

1. Southern California Edison Company (Edison) shall immediately provide copies of the income tax forms as described herein to the Division of Ratepayer Advocates (DRA).

2. DRA shall treat the information as confidential, as provided by Code § 583 and shall ensure there is no public disclosure of the materials in testimony – or any other means – unless Edison consents to publication following a meet and confer session, or either the Assigned Commissioner or the Commission authorizes its disclosure. DRA shall treat the information as confidential, as provided by Code § 583 and shall ensure there is no public disclosure of the materials in testimony – or any other means – unless Edison consents to publication following a meet and confer session, or either the Assigned

³ However, for informational purposes only, I refer the parties to Administrative Law Judge's Ruling on Water Division's Motion to Compel, Investigation 03-10-038, May 7, 2004. (See, http://www.cpuc.ca.gov/WORD_PDF/RULINGS/36382.DOC.)

Commissioner or the Commission authorizes its disclosure. DRA shall not retain any hard copy copies, shall not share any of this data with other Commission staff not assigned to the relevant portion of this proceeding, nor shall DRA retain any of this data. Upon issuance of a Commission decision finally resolving any application for rehearing the decision in this proceeding, or after the period to apply for rehearing has expired and no application for rehearing has been filed, DRA shall return all copies to Edison or demonstrate to Edison's satisfaction that all copies are permanently destroyed. DRA may not retain any electronic images or any other form of additional copies of this data. DRA may not retain by any other means electronic or paper copies in handwritten or other form any information extracted from these tax forms.

3. DRA may serve testimony on tax issues on April 5, 2006 and Edison may serve rebuttal on that testimony only on May 10, 2006.

4. Except as modified herein all other pleadings in the motions for reconsideration are denied.

Dated March 8, 2006, at San Francisco, California.

/s/ DOUGLAS M. LONG

Douglas M. Long
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Motions for Reconsideration of February 9, 2006 Ruling on all parties of record in this proceeding or their attorneys of record.

Dated March 8, 2006, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.